

APPEAL NO. 032510
FILED NOVEMBER 13, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 26 and September 10, 2003. The hearing officer resolved the disputed issues by deciding that the respondent/cross-appellant (claimant) sustained a compensable injury on _____; that due to the compensable injury, the claimant had disability from December 5, 2002, through the date of the CCH; and that the appellant/cross-respondent (carrier) did not waive its right to contest compensability under Sections 409.021 and 409.022. The carrier appeals the hearing officer's determinations on the issues of compensable injury and disability. The claimant appeals the hearing officer's determination that the carrier did not waive its right to contest compensability. The carrier filed a response. No response was received from the claimant.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained a compensable injury as defined by Section 401.011(10) and that she had disability as defined by Section 401.011(16). Conflicting evidence was presented at the CCH on the issues of whether the claimant sustained a compensable injury and whether she had disability. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations that the claimant sustained a compensable injury and that she had disability for the time period found by the hearing officer are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

It is undisputed that the carrier filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) with the Texas Workers' Compensation Commission (Commission) on December 27, 2002, in which the carrier certified that benefits would be paid as accrued, and that the carrier filed a second TWCC-21 with the Commission on January 21, 2003, in which it contested the compensability of the claimed injury. The hearing officer found that the carrier first received written notice of the injury on December 23, 2002, and further found that the carrier timely and properly contested the injury in accordance with Sections 409.021 and 409.022.

The claimant contends that the carrier first received written notice of the injury on December 19, 2002, and thus waived its right to contest compensability, apparently because December 27, 2002, was the eighth day after December 19, 2002. We note

that there was conflicting evidence at the CCH regarding when the carrier first received written notice of the injury and such conflicts are for the hearing officer to resolve as the finder of fact. However, if, as the claimant asserts, written notice was first received by the carrier on December 19, 2002, then the seventh day thereafter would have been December 26, 2002, which was not a working day as defined by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.3(b) (Rule 102.3(b)). Thus, pursuant to Rule 102.3(a)(3), the seven-day time period for the carrier to file the first TWCC-21 was extended to December 27, 2002, which was the next day that was a working day as defined by Rule 102.3(b). Consequently, even if the carrier first received written notice of injury on December 19, 2002, the first TWCC-21 was timely filed on December 27, 2002. See Texas Workers' Compensation Commission Appeal No. 030950, decided June 12, 2003. Accordingly, the claimant has not shown that the hearing officer erred in determining that the carrier did not waive its right to contest compensability.

We do not find that the hearing officer abused his discretion or committed reversible error in denying the claimant's request for a subpoena duces tecum or in denying the claimant's motion for protection (to quash discovery).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **PMA CAPITAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge